IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

-

WRIT PETITION NO : 22144 of 2004

Between:

Sri. Mir. shabbir Ali, S/o. Mir Niwazish Ali,
R/o. H.No. 22-2-521, NoorKhan Bazar, Hyderabad.

..... PETITIONER

AND

1. Government of Andhra Pradesh, Rep. by its

Secretary, Housing Department,
Secretariat, Hyderabad.
2. The Vice Chairman and Housing Commissioner,

Andhra Pradesh Housing Board, Gruhakalpa,
Nampally, Hyderabad.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus, or any other appropriate Writ, order or direction, declaring the action of the 2nd respondent in issuing the proceedings 929/B2/2004 dated 4-8-2004 as arbitrary, illegal, violative of principles of natural justice and violative of Articles 14 and 16 of the Constitution of India and set aside the same.

Counsel for the Petitioner: SMT.G.JYOTHI KIRAN

Counsel for the Respondent No.2: MR.A.K.JAYAPRAKASH RAO

The Court made the following:

ORDER:

This Writ Petition is filed to issue a Writ of Mandamus declaring the action of the second respondent in issuing the proceedings No.929/B2/2004, dated 04.08.2004 as arbitrary, illegal and violative of principles of natural justice.

2. The brief facts that are necessary for the present Writ Petition may be stated as follows:

3. The petitioner was appointed as a Typist in the first respondent Board on 01.03.1967 and retired on 31.01.2004. During his entire service, he was not given any further promotion from the post of Typist. The second respondent - Board granted three stagnation increments and submitted his pension papers to the audit authorities at the time of his retirement. But to his utter surprise second respondent issued impugned proceedings informing the Writ Petitioner that three stagnation increments sanctioned to him earlier by proceedings dated 21.03.2001 were withdrawn as per G.O. Ms.No.389GA(PE-I] Department, dated 20.08.1987. It is stated that the said G.O. is not at all connected or related to the issue of granting stagnation of increments and the said G.O deals with the automatic increments and time bound increments, where there are no existing vacancies. The stagnation increments will be given to the employees where they lost their chance of promotion without their fault. As per G.O.Ms.No. 171 Housing, dated 16.08.1962, all the benefits and privileges which are being enjoyed by the Government servants were extended to the employees of the ex-city Improvement and Town Improvement Trust, who were taken up by the second respondent -Board. It is further stated that all the other eligible employees are enjoying the privilege of stagnation increments. The second respondent Board has not made any recoveries to whom stagnation increments were granted. Therefore, the Writ Petition has been singled out and discriminated. The impugned proceedings have been issued unilaterally without affording any opportunity to him to explain. Hence, the present writ petition.

4. The second respondent filed a detailed counter affidavit admitting the appointment and superannuation of the writ petitioner. In so far as the promotions

are concerned, the same were denied by the second respondent. When the pension papers of the writ petitioner are sent to the State Audit for certification, the same were returned along with memo dated 29.06.2004 to the second respondent informing about the ban of implementation of automatic advancement scheme and sanction of increments beyond the maximum of time scales to the employees working in State level Public Enterprises. Therefore, in view of G.O.Ms.No.389GA(PW-I) Department, dated 20.08.1987 and as per the objections made by the Assistant Audit Officer, the three stagnation increments were withdrawn by proceedings dated 26.06.2001 and an excess amount drawn by the petitioner in pursuance to the sanction of the three stagnation increments were ordered to be recovered from the pensionary benefits of the petitioner by proceedings dated 04.08.2004. Thereafter, the pensionary papers were duly revised and submitted to the Audit for certification. The withdrawal was done as per the orders issued by the Government in G.O.Ms.No.389 dated 20.08.1987 and all officers and staff of the second respondent - Board were already informed vide Circular No.7758/B5/2002, dated 06.03.2003 stating that sanction of special annual increments beyond maximum of time scale and automatic advancement scheme to the employees of A.P. Housing Board as per eligibility is kept in abeyance till necessary orders are received from the Government. The petitioner regularly attended the office, while process of withdrawal of stagnation increments and refixation of pay was being done and the petitioner himself has insisted to take early action to refix his pay and settle his pension at an early date. The petitioner never objected the process of pay fixation and kept silent during the process and received the pay fixation orders dated 05.08.2004 requesting to consider his case, if the Government or Court issue any order to continue the Automatic Advancement Scheme to the Board employees in future, which implies and indicates willingness of the petitioner for the revised pension proposals. The Board also issued revision and recovery orders in respect of the some of the employees. Therefore, the allegation that the petitioner is singled out, is absolutely incorrect and hence, the second respondent prays to dismiss the writ petition.

5. The learned counsel appearing for the petitioner Ms.G.Jyothi Kiran vehemently contended that the issuance of the impugned proceedings is without any notice to the writ petitioner and also without giving any opportunity to put forward his case and therefore, the impugned order suffers from violation of principles of natural justice. For that preposition she relied upon the decisions reported in **MOHDABDUL**

WAHEED v A.P.S.E.B, HYDERABAD AND ANOTHER and **STATE OF KARNATAKA AND ANOTHER v MANGALORE UNIVERSITY NON TEACHING EMPLOYEES' ASSOCIATION AND OTHERS** . It is further contended that at the instance of the writ petitioner, the second respondent granted three stagnation increments, keeping in view the Government orders and therefore, the petitioner cannot be found fault. Therefore, she prays to set aside the impugned proceedings.

6. On the other hand, the learned standing counsel appearing for the second respondent - Board contended that the petitioner is not singled out and with regard to some of the retired employees, the said impugned proceedings have been issued ordering to recover the excess amount paid in pursuance of the sanction of automatic advancement scheme and that by circular No. 7758/B5/2002 dated 06.03.2003 all the officers and staff of housing board were informed about the G.O.Ms.No.389, dated 20.08.1987 and therefore, it is not necessary to communicate individually calling for the explanation since it is a policy decision of the Government, which is to be implemented by the second respondent. Therefore, the impugned order does not suffer any legal infirmities, so as to call for interference.

7. The short point that arises for consideration in this Writ Petition is; Whether the impugned proceedings suffer from any legal infirmities, so as to call for any interference by this Court for violation of principles of natural justice?

8. As per the proceedings No. 91/91/B2/2001, dated 26.06.2001 the petitioner was sanctioned three stagnation increments beyond the maximum time scale of pay. As per the G.O.Ms.o.171 Housing , dated 16.08.1962 all the benefits and privileges which are being enjoyed by the Government servants, should be extended to all the employees of the Housing Board, including the employees of Ex-city Improvement Board and Town Improvement Trust who were taken over by the Housing Board. As per the instructions in G.O.Ms.No.389 dated 20.08.1987 all the public enterprises in the State are strictly instructed that they should not sanction automatic increments beyond the maximum of the scale or given automatic time bound promotions without reference to performance, needs of the organization and existence of vacancies. As per the instructions issued by the second respondent in its circular No.7758/B5/2002 dated 06.03.2003, the Housing Board stated that the sanction of special annual increments beyond maximum of the scale and automatic advancement scheme to the employees of A.P. Housing Board as per eligibility, is kept in abeyance till the

necessary orders are received from the Government for further continuance of the above benefits to the eligible employees of A.P. Housing Board. As per G.O.Ms.NO.389 dated 20.08.1987 sanction of automatic increment is not automatic or routine without reference to performance, needs of the organization and existence of vacancies. The proceedings issued by the second respondents in proceedings No.91/91/B2/2001, dated 26.06.2001 granting three stagnation increments is not filed in to the Court. It is not stated in the affidavit that the stagnation increments were granted to the writ petitioner duly taking into consideration of the performance, needs of the organization and existence of the vacancies. Therefore, in the absence of factual foundation, the petitioner cannot get automatic advance increment for stagnation.

9. The learned counsel placed a decision reported as first cited, in which it was held that:

> *"It is strange, and shocking to some extent, to note that the Board issued the Memo for recovery of the amount disbursed by the Board of its own accord after the employees retired. After the employees retires, the Board has no power to recover the amount from any dues payable to the petitioner unless the petitioner was given any opportunity to show-cause. Admittedly no opportunity was ever given to the petitioner to show-cause against the proposed recovery. The Supreme Court has on more than one occasion held that if excess payment is made by the Management/employer to the employee due to its own error in computing the pay of the employee after long period, the employer should not recover the excess payment made by him if there was no fault of misrepresentation made by the employee."*

For the same proposition, she also relied upon a decision reported as second cited, in which it was stated that:

> *"It is true, in a case of this nature where the payment already made is sought to be recovered, thereby visiting the employees with adverse monetary consequences, the affected employees should have been put on notice and their objections called for. But it is by now well settled that in all cases of violation of the principles of natural justice, the court exercising jurisdiction under Article 226 of the Constitution need not necessarily interfere and set at naught the action taken. The genesis of the action contemplated, the reasons thereof and the reasonable possibility of prejudice are some of the factors which weigh with the court in considering the effect of violation of the principles of natural justice."*

There is no dispute about the preposition laid down in the aforesaid decisions that

when a payment already made is sought to be recovered, the affected employees shall be put on notice and their objections called for.

10. No doubt no individual notices have been given in this case, but it is clearly mentioned in the affidavit filed by the respondent that all the officers and staff of the respondent Housing Board were already informed vide Circular No.7758/B5/2002, dated 06.03.2003 that sanction of special annual increments beyond maximum period of scale and automatic advancement scheme to the employees of the A.P. Housing Board as per eligibility, is kept in abeyance till necessary orders are received from the Government. At that time, admittedly, the petitioner was working as Typist. Therefore, in the reply affidavit, though it is stated that he is not aware of the circular dated 06.03.2003, the same cannot be accepted since it is not an individual notice, but it is given to all the staff and employees of the second respondent. If really the petitioner is not aware of the proceedings of the second respondent dated 06.03.2003 certainly he would not have got pension at an early date and he would have certainly objected for the process of pay fixation, when the pension papers were returned by the audit department. As a matter of fact, the petitioner made a representation on 05.08.2004 informing the second respondent that his name my be considered for sanction of advance increments, if the Government or Court considers for continuation of the automatic advance scheme and sanction of stagnation increments beyond the time scale in future. Since it is a policy decision taken by the second respondent to all the employees it cannot be said that the petitioner has been singled out. The second respondent - Board has already issued revisional and recover orders in respect of the some of the employees retired recently. Admittedly at any point of time the petitioner did not raise any objection for the proposed revision on pension papers nor submitted any objection or protested against the revision of pension. The second respondent is only implementing the orders of the Government and, therefore, it cannot be said to be a unilateral decision. As per the circular No.7758/B5/2002, dated 06.03.2003, the Board has taken a decision to kept the sanction of automatic advancement scheme for abeyance till the orders are received from the Government to all its employees. The Board also sought clarification for continuation of the benefits of special annual increments and automatic advancement scheme and the orders are awaited. If the Government takes any decision with regard to the grant of benefit of automatic advancement scheme in future, the same shall have to be extended to the petitioner. The petitioner

has not shown that the proceedings No.929/B2/2004 dated 04.08.2004 suffers from any legal infirmities, so as to call for any interference by this Court.

11. Therefore, the writ petition is devoid of merits and is dismissed at the stage of admission.

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09-02-2005

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To

1. The Secretary, Government of Andhra Pradesh,

Housing Department,
Secretariat, Hyderabad.

2. The Vice Chairman and Housing Commissioner,

Andhra Pradesh Housing Board, Gruhakalpa,
Nampally, Hyderabad.

3. 2 CD copies.